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Case No._____

Supreme Court of the United States

October Term, 1984

HEIGHTS COMMUNITY CONGRESS
Petitioner,

vs.

VETERANS ADMINISTRATION
Respondent

ON PETITION FOR A WRIT OF CERTIORARI
To the United States Court of Appeals
For the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

EDWARD G. KRAMER
COUNSEL OF RECORD

KENNETH J. KOWALSKI
THE HOUSING ADVOCATES, INC.
353 Leader Building
Cleveland, Ohio 44114
Counsel for Petitioner

52pp

QUESTION PRESENTED FOR REVIEW

1. Would the disclosure of the property addresses, lender numbers and loan amounts on Veterans Administration insured loan forms to a not-for-profit fair housing organization constitute a clearly unwarranted invasion of personal privacy under 5 U.S.C. § 552 (b)(6) (Exemption (b)(6)) of the Freedom of Information Act?

LISTING OF COMPANIES UNDER RULE 28.1

The Heights Community Congress is a not-for-profit corporation organized under the laws of Ohio. It does not have any shareholders, subsidiaries or affilliates.

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No. --------

HEIGHTS COMMUNITY CONGRESS

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VETERANS ADMINISTRATION

Respondent.

PETITION FOR A WRIT OF CERTIORARI
To the United States Court of Appeals
For the Sixth Circuit

The petitioner, Heights Community Congress, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Sixth Circuit entered in this proceeding on April 23, 1984.

OPINIONS BELOW

The opinion of the Court of Appeals is found at 732 F.2d 526 (6th Cir. 1984) and the opinion of the District Court for the Northern District of Ohio was not reported. Both of these decisions appear in the Appendix hereto.

JURISDICTION

The judgment of the Court of Appeals was entered on April 23, 1984. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The Freedom of Information Act, 5 U.S.C. § 552, provides, in pertinent part:

5 U.S.C. § 552(b)(6):

(b) This section does not apply to matters that are:
(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

The Veterans' Rehabilitation and Education Act of 1980 in pertinent part states:

38 U.S.C. § 3301(c)(2):

Any appraisal report or certificate of reasonable value submitted to or prepared by the Veterans' Administration in connection with any loan guaranteed, insured, or made under chapter 37 of this title shall be made available to any person who applies for such report or certificate.

38 U.S.C. § 3301(j):

(j) Except as provided in subsection (j)(1) of this section, any disclosure made pursuant to this section shall be made in accordance with the provision of section 552a of title 5.

The Veterans Administration regulations interpreting the 1980 amendments state in pertinent part that:

38 C.F.R. § 1.512(b)(1):

Upon request, any person is entitled to obtain copies of certificates of reasonable value, appraisal reports, property inspection reports, or reports of inspection on individual water supply and sewage disposal systems provided that the individual identifiers of the veteran-purchaser(s) or dependents are deleted prior to release of such documents. However, individual identifiers may be disclosed in accordance with paragraph (b)(2) of this section. The address of the property being appraised or inspected shall not be considered an individual identifier. (38 U.S.C.§3301(a), (c).)

STATEMENT OF THE CASE

Petitioner, Heights Community Congress (HCC), is a coalition of religious, civic, educational, neighborhood, and community organizations in the Cleveland Heights-University Heights area, an area contiguous to Cleveland, Ohio.

In this FOIA action, HCC seeks to obtain information from the Veterans Administration concerning VA insured loans made in Cleveland Heights. HCC requests the information to help insure the equal access of black veterans to federal loan guarantees and to determine whether the VA loan program is being manipulated by realtors and lenders for the purpose of steering veterans into certain areas of the community according to race.

HCC originally requested information on the loan guaranty program relating to race of the veteran and the location of the house by

census tract. Due to the total failure of the VA to respond to the request, HCC filed a lawsuit against the VA in the United States District Court for the Northern District of Ohio, Eastern Division. The VA was subsequently ordered by the Court to produce the records requested. However, because the data was maintained by zip code rather than by census tract, the VA provided the data for the four zip codes which together encompass all of Cleveland Heights, as well as parts of surrounding communities.

After determining that the data in this form was not geographically specific enough to allow a determination of the racial impact on neighborhoods, HCC filed a second FOIA request with the VA, seeking VA documents identified as the Residential Appraisal Report Form 26-1803 and Certificate of Reasonable Value Form 26-1805 for each loan guarantee granted during the years 1976,

1977, 1978 and 1979. The VA responded by granting the request subject to the deletion of the veterans' names, social security numbers, current addresses, the property addresses, the amounts of the loans and the lenders' identification numbers. HCC appealed this partial denial but the VA affirmed its initial decision.

The deletions made the records useless for HCC's purposes. The petitioner amended its complaint and asked the District Court to order the VA to disclose the deleted information. HCC subsequently modified its position and agreed to the deletion of the names and social security numbers of the veterans from the forms. The VA continued to refuse to produce the documents even with these items deleted, and motions for summary judgment were filed by both sides.

On February 24, 1982, the District Court issued an order denying HCC's motion for

summary judgment on the issue of disclosure and denying the VA's motion on the issue of payment of production costs. (App. 10a).

The District Court held that the information provided by the VA in the form of statistical data by zip code and the redacted forms was sufficient for HCC's purposes. The court further held that the disclosure of the information would constitute a clearly unwarranted invasion of privacy in violation of Exemption (b)(6) of the FOIA (5 U.S.C. § 552 (b)(6)). See also: 38 U.S.C. § 3301(j).

An appeal from that judgment was taken on the issue of the failure of the VA to disclose the property addresses, loan amounts and identities of lenders.

In an opinion issued on April 23, 1984, the Court of Appeals affirmed the District Court's decision that the disclosure of the addresses would constitute a clearly unwarranted invasion of privacy. (App. 8a). In

reaching its decision, the Court enunciated the balancing test mandated by this Court's decision in Department of the Air Force v. Rose, 425 U.S. 352 (1976). The interests to be weighed in determining whether disclosure would result in a clearly unwarranted invasion of privacy are the individual's privacy interest and the benefit to the public interest from disclosure. (App. 4a).

In applying that test to the deleted information the court attached great importance to the privacy interest involved in the addresses (App. 6a). In doing so, the court completely ignored the VA's own regulation which states that the property addresses on the documents requested are not to be considered as individual identifiers. 38 C.F.R. § 1.512 (b)(1).

The court then turned to the public interest in disclosure and discounted the public interest in "merely monitoring the

operation of a federal program." (App. 6a). The court did, however, recognize the legitimate public purpose in the investigation of racial steering. (App. 7a). The court further conceded that in order to be useful, the information would have to relate to very specific neighborhoods or areas. Nevertheless, the court hypothesized that realtors or lenders accused of steering due to the evidence revealed in the requested information might attempt to contact veterans. The court held that such contact would constitute an invasion of privacy and that the release of the information to HCC was clearly unwarranted. (App. 7a-8a).

REASONS FOR GRANTING THE WRIT

THERE IS A SPLIT IN THE CIRCUITS ON IMPORTANT QUESTIONS OF FEDERAL LAW.

This case presents important questions concerning the application of the balancing test required under the FOIA's sixth exemp-

tion. Among these is whether it is proper to consider the speculative and secondary effects of an unrestricted disclosure of requested information when determining if disclosure will constitute a clearly unwarranted invasion of personal privacy.

Congress enacted the FOIA to "pierce the veil of administrative secrecy and to open public action to the light of public scrutiny." Department of Air Force v. Rose, 425 U.S. 352, 361 (1976), quoting decision of Court of Appeals, 495 F.2d 261, 262 (2d Cir. 1974). Disclosure of information held in agency records is mandatory unless the government can prove that the requested information is exempt from disclosure under one of the Act's nine exemptions. Notwithstanding those exemptions, the Act's liberal disclosure requirements establish a presumption in favor of disclosure. EPA v. Mink, 410 U.S. 73, 79 (1973).

The Sixth Circuit's decision tilts the balance away from disclosure because it widens the exemption far beyond the Congressional intent. By measuring secondary and speculative effects of disclosure under an unrestricted test, the Court of Appeals overemphasized the extent to which disclosure itself would constitute an unwarranted invasion of privacy. It would be possible in almost any case to identify remote, indirect consequences of disclosure that could be said to constitute an invasion of privacy. The Sixth Circuit's rationale could too easily be used by an agency to hide information that FOIA was designed to disclose. Review of the issues presented in this case is needed to preserve the integrity of the FOIA's disclosure requirements and to provide guidance as to how the balancing test is to be performed.

A. By considering speculative and secondary effects of disclosure, the Court of Appeals is in direct conflict with the Court of Appeals for the District of Columbia.

In order to find a significant invasion of privacy in the disclosure of addresses the Sixth Circuit hypothesized a chain of events which might eventually result in an invasion of the veterans' privacy. It held that disclosure of property addresses would involuntarily involve the veterans in HCC's investigation of steering. However, this could only happen if: 1) HCC's statistical compilation would in fact present evidence of illegal steering; 2) because of such evidence realtors and/or lenders would be accused of steering; 3) realtors or lenders so accused would obtain the reports; and 4) those charged with steering would interrogate individual veterans in an attempt to exonerate or defend themselves.

The Sixth Circuit's construction of the balancing test is inconsistent with this Court's determination in Air Force v. Rose, 425 U.S. at 380, that the District Court could properly discount the possibility that disclosure would result in an unwarranted invasion of personal privacy when the attendant circumstances indicate otherwise. This Court further stated that the legislative history is clear "[t]hat the Exemption was directed at threats to privacy more palpable than mere possibilities." 425 U.S. at 381, n.19.

The D.C. Circuit expressly rejected a District Court's attempt to include speculative invasions within the balancing test required under Exemption 6. Arieff v. United States Department of Navy, 712 F.2d 1462 (D.C. Cir. 1983). The Arieff court held:

> ...[t]he text of the Exemption does not apply to an invasion of privacy produced as a secondary effect of the release

> ...According to the statute it is the very "production" of the documents which must "constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6). 712 F.2d at 1468.

In a recent District Court case which followed Arieff, names and addresses of veterans were disclosed to a non-profit organization even though disclosure might expose the veterans to searching inquiries by the news media and other interested parties. National Association of Atomic Veterans v. Director, Defense Nuclear Agency, 583 F. Supp. 1483 (D. D.C., 1984). In contrast to the decision reached in the present case, that court held that such a possibility was not covered under Exemption 6 since it amounted to little more than "unsubstantiated speculation about possible secondary effects of disclosure." Atomic Veterans, 583 F. Supp at 1487.

B. The decision of the Sixth Circuit is in conflict with the District of Columbia Circuit as to whether balancing under Exemption 6 is to be performed in the context of unrestricted disclosure to the public or of a use specific release restricted to the requesting parties.

One difficult question presented by the balancing test of Exemption 6 is whether the invasion of privacy is to be measured pursuant to an unrestricted disclosure to the general public or pursuant to a specific release restricted to the requesting parties. This court did not reach this important issue in either United States Department of State v. Washington Post Co., 456 U.S. 595 (1982) or Department of Air Force v. Rose, 425 U.S. 352 (1975).

Under an unrestricted approach, invasions of privacy are measured as if the entire public would in fact receive the information. A restricted approach balances only the actual invasions of personal privacy likely to occur from disclosure to and use by the requester.

In this case, the Sixth Circuit applied a blatantly unrestricted balancing test. It looked beyond the invasion that would be caused by disclosure of the data to HCC for the stated purpose of compiling a statistical profile. In Getman v. NLRB, 450 F.2d 670 (D.C. Cir. 1971), the D.C. Circuit applied a more restricted test which measured only the effects of a disclosure to the law professors who would use it to study NLRB elections.

In Ditlow v. Schultz, 517 F.2d 166 (D.C. Cir. 1975), the Court of Appeals questioned the application of a restricted balancing test. While suggesting in dicta that the privacy invasion be measured in the context of a disclosure to the general public, the Ditlow court did not reach a decision on this question. See also: Disabled Officers v. Rumsfeld, 428 F. Supp. 457 (D.D.C. 1977) (Addresses disclosable under either a restricted or unrestricted test); Celmins v.

United States Department of Treasury, 457 F. Supp. 13 (D.D.C. 1977) (Non-stigmatizing information disclosable under restricted test when the document would receive limited circulation).

The case below would most likely have been decided differently under a restricted test. The data would be disclosed because the invasion of privacy that could conceivably result from HCC's contemplated use of the data is clearly minimal. The only imaginable effects of the disclosure on veterans would be the result of disclosure of the data to parties other than HCC. Only under an unrestricted test could the court factor into the balancing such speculative damage.

C. The exaggeration by the Court of Appeals of the privacy interest attached to property addresses is in direct conflict with the Court of Appeals of another Circuit.

The Sixth Circuit upheld the trial court's identification of an important

privacy interest in the property addresses sought by HCC. (App. 6a). The Court of Appeals stated that "...an address is a record which can be identified as applying to [an] individual." (App. 6a) quoting Department of State v. Washington Post, 496 U.S. 595, 601-02 (1982). In actuality, the quoted material in the Sixth Circuit's decision is a partial quotation of the legislative history as relied on by Justice Rehnquist in Department of State, H. Rep. No. 1497, 8th Cong. 2d Sess. 11 (1966), reprinted in U.S. CODE CONG. & ADMIN. NEWS 1966, p. 2428. That statement indicated that the exemption was designed "to cover detailed government records on an individual." It would seem that the Sixth Circuit's reliance on this legislative history for the proposition that mere addresses, without more, can be considered identifiers, is misplaced.

It is noteworthy that the VA's own regulation regarding disclosure of property addresses states: "The address of the property being appraised or inspected shall not be considered an individual identifier." 38 C.F.R. §1.512 (b)(1), interpreting 38 U.S.C. §3301 (c)(2). The Court of Appeals' decision failed to explain this apparent contradiction between the agency's own regulations and its refusal to disclose the property addresses to the petitioner.

The importance placed by the Court of Appeals on the property addresses alone, brings the decision into direct conflict with the Court of Appeals for the District of Columbia. In Getman, 450 F.2d 670, the court found the legislative history to indicate that only intimate details of a personal nature were meant to be covered under Exemption 6. The court held: "The giving of names and addresses is a very much lower degree of

disclosure; in themselves a bare name and address gives no information about an individual which is embarassing." Id., at 675. Thus, the disclosure of addresses, when not accompanied by intimate details of a personal nature was held in Getman to be a "relatively minor invasion of privacy", Ibid., not implicating an important privacy interest.

Nor does the fact that HCC's FOIA request also sought to discover the amount of the loans guaranteed make the invasion of privacy more than minimal. As was recognized by Justice Brennan in Dept. of Air Force v. Rose, 425 U.S. 352 at 376 (1976), the legislative history of the FOIA clearly indicates that Congress did not intend to exempt information concerning government benefits from disclosure under this exemption: "'For example, health, welfare, and selective services records are highly personal to the person involved yet facts

concerning the award of a pension or benefit should be disclosed to the public.'" Ibid., quoting S. Rep. No. 813, 89th Cong., 1st Sess. 9 (1965) reprinted in 1966 U.S. CODE CONG. & AD. NEWS 1196.

Furthermore, the Sixth Circuit's finding of significant privacy interests in the data sought by HCC is questionable since the requested items are all matters of public record. As noted by Justice Rehnquist in Department of State v. Washington Post, "[t]he public nature of information may be a reason to conclude, under all circumstances of a given case, that the release of such information would not constitute a clearly unwarranted invasion of personal privacy..." 456 U.S. 595, 603 n.5 (1982). Mortgage deeds registered in the County Recorders Office indicate the veteran's name, a complete legal description of the property, the name and address of the lender, and the fact that a

guarantee was provided by the VA. Anyone can obtain this deed at the County Recorders Office.

However, because the race of the veteran is not included in the deed this information cannot be used by HCC in its monitoring.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

EDWARD G. KRAMER
(Counsel of Record)

KENNETH J. KOWALSKI

The Housing Adovcates
Incorporated
353 Leader Building
Cleveland, Ohio 44114
(216) 579-0575

Attorneys for
Petitioner

Dated:
July 20, 1984

The assistance of Leslie D. Holmes a law clerk at THE HOUSING ADVOCATES, INC., in the research and preparation of this petition is greatfully acknowledged.

CERTIFICATE OF SERVICE

Pursuant to Rule 28.5(b), Rules of the Supreme Court, I hereby certify that the requisite number of copies of the foregoing petition for writ of certiorarti have been served on respondent Veterans Administration by forwarding such copies to the Solicitor General, Department of Justice, Washington, D.C. 20530, by U.S. Mail, postage paid this 20th day of July, 1984. I further certify that all parties required to be served have been so served.

Edward G. Kramer

EDWARD G. KRAMER
Counsel of Record

APPENDIX

RECOMMENDED FOR FULL TEXT PUBLICATION
See, Sixth Circuit Rule 24

No. 82-3450

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

HEIGHTS COMMUNITY CONGRESS,
Plaintiff-Appellant,

v.

VETERANS ADMINISTRATION,
Defendant-Appellee.

ON APPEAL from the United States District Court for the Northern District of Ohio.

Decided and Filed April 23, 1984

Before: EDWARDS and KRUPANSKY, Circuit Judges; and REED, District Judge.*

KRUPANSKY, Circuit Judge, delivered the opinion of the Court in which REED, District Judge, concurs. EDWARDS, Circuit Judge, (p. 9) delivered a separate opinion concurring in part and dissenting in part.

KRUPANSKY, Circuit Judge. This is an appeal by the Heights Community Congress (HCC) from a district court order upholding a Veterans Administration (VA) decision not to disclose the property address, the loan amount and the identity

* Hon. Scott Reed, United States District Judge for the Eastern District of Kentucky, sitting by designation.

of the lender on VA insured loans granted in Cleveland Heights, Ohio, which request was made pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552. The district judge concluded that the information, if relevant, would constitute a "clearly unwarranted invasion of personal privacy" and so was exempt from disclosure under 5 U.S.C. § 522(b)(6) (exemption (b)(6)).

The underlying facts are straightforward and uncontested. HCC is an umbrella organization of religious, educational and civic groups in Cleveland Heights, a contiguous suburb of Cleveland. HCC was created in the 1970's, in part, to deal with the rapid influx of black residents from nearby city neighborhoods which had themselves undergone a significant alteration in racial composition. In 1980, HCC filed the present FOIA request with the VA to determine if black veterans were receiving equal access to federal loan guarantees and to further investigate the possibility that lenders and realtors were manipulating the VA loan program so as to steer white and black veterans into specific areas of Cleveland Heights. The initial FOIA request sought information by race and census tract as to VA guaranteed loans during the period 1975-1979 as well as attorney fees. The VA, which did not maintain the records by census tract but by zip code, provided the data for the four zip codes which together included all of Cleveland Heights, but which also encompassed portions of surrounding cities.

The HCC thereupon amended its FOIA request to confine the inquiry to Cleveland Heights, and demanded the individual Residential Appraisals (Form 26-1803) and Certificates of Reasonable Value (Form 26-1805) utilized for each loan granted in Cleveland Heights. The VA released the above-cited forms but deleted the name and social security number of the recipient, the property address, the amount of the loan and the identity of the lender. Upon cross-motions for summary judgment, the district judge determined that the statistical information provided by the VA according to zip code, and the

data from the redacted forms, were sufficient to satisfy HCC's purpose, and that release of further information which would identify individual veterans was a clearly unwarranted invasion of personal privacy. The HCC conceded that names and social security numbers could be redacted, but insisted on disclosure of the property addresses as well as the value of the loans and identities of the lenders.

Exemption 6 provides that the disclosure requirements of the FOIA do not apply to "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 522 (b)(6). This section has been held to create a two-part test: (1) does the file include personnel, medical or "similar" data; and (2) if so, would disclosure be a "clearly unwarranted" invasion of personal privacy. *United States Dept. of State* v. *Washington Post Co.*, — U.S. —, 102 S.Ct. 1957, 1961 (1982).

In addressing the threshold requirement, the Supreme Court in *Washington Post, supra,* held that a "similar" file was not to be construed as encompassing "a narrow class of files containing only a discrete kind of personal information." *Id.* at 1961. Rather, Exemption 6 was to be applied to "any Government records on an individual which can be identified as applying to that individual." *Id.* As stated by the Supreme Court, Congress intended that this "general exemption" would, in turn, be "held within bounds" by the second requirement of Exemption 6, which precludes release of such individual information when it would constitute a "clearly unwarranted invasion of personal privacy." *Id.* at 1960.

In *Dept. of the Air Force* v. *Rose,* 425 U.S. 352 (1976), the Supreme Court mandated that the court balance the individual's right to privacy against disclosure's benefit to the public interest in determining if the disclosure would result in a "clearly unwarranted invasion of personal privacy":

> Congressional concern for the protection of the kind of confidential personal data usually included in a personnel

> file is abundantly clear. But Congress also made clear that nonconfidential matter was not to be insulated from disclosure merely because it was stored by an agency in its "personnel" files. Rather, Congress sought to construct an exemption that would require a balancing of the individual's right of privacy against the preservation of the basic purpose of the Freedom of Information Act "to open agency action to the light of public scrutiny." The device adopted to achieve that balance was the limited exemption, where privacy was threatened, for "clearly unwarranted" invasions of personal privacy.
>
> Both House and Senate Reports can only be read as disclosing a congressional purpose to eschew a blanket exemption for "personnel . . . and similar files" and to require a balancing of interests in either case. Thus the House Report states, H.R. Rep.No. 1497, p. 11: "The limitation of a 'clearly unwarranted invasion of personal privacy' provides a proper balance between the protection of an individual's right of privacy and the preservation of the public's right to Government information by excluding those kinds of files the disclosure of which might harm the individual." Similarly, the Senate Report, S. Rep.No. 813, p.9, states: "The phrase 'clearly unwarranted invasion of personal privacy' enunciates a policy that will involve a balancing of interests between the protection of an individual's private affairs from unnecessary public scrutiny, and the preservation of the public's right to governmental information."

425 U.S. at 372.

In performing the balancing test, the clear majority of circuits have employed a two prong approach: (1) identification of the privacy interest at stake; and (2) specification of the public interest in disclosure. *See Madeira Nursing Center, Inc.* v. *N.L.R.B.*, 615 F.2d 728, 730 (6th Cir. 1980):

> The central inquiry is whether public access to the information * * * is tantamount to an invasion of privacy;

> if so we ask whether such an invasion is justified by any countervailing public benefit from disclosure.

Accord, Washington Post Corp. v. *U.S. Dept. of H.H.S.*, 690 F.2d 252, 261 (D.C. Cir. 1982), *Harbolt* v. *Dept. of State*, 616 F.2d 772, 775 (5th Cir. 1980); *Wine Hobby USA, Inc.* v. *IRS*, 502 F.2d 133, 137 (3rd Cir. 1974); *Rural Housing Alliance* v. *U.S. Dept. of Agriculture*, 498 F.2d 73, 77 (D.C. Cir. 1974). *But see Robles* v. *EPA*, 484 F.2d 843, 847 (4th Cir. 1973). In addition, it has been held in the Ninth and D.C. Circuits that the balancing test may include consideration of "whether other sources of information might suffice." *Rural Housing Alliance, supra* at 77; *Church of Scientology* v. *Dept. of Defense*, 611 F.2d 738, 746 (9th Cir. 1979). The burden of proof is on the government to justify the exemption. *Ingle* v. *Dept. of Justice*, 698 F.2d 259, 264 (6th Cir. 1983). Further:

> In reviewing determinations made under the FOIA an appellate court is confronted with two responsibilities. Initially, the reviewing court must establish that the district court had an adequate factual basis for its decision. Secondly, the court on appeal must ascertain upon the factual foundation developed below if the conclusion of the trial court is clearly erroneous.

Ingle, 698 F.2d at 267.

Initially it is readily apparent, and not contested by the parties, that the record below, which was developed on cross-motions for summary judgment, is an adequate factual basis for resolving the instant matter. Further, it is equally clear and uncontested that the property appraisal forms and certificates of reasonable value are, in this case, within the "similar file" ambit of Exemption 6. Accordingly, the issue at bar is the district court's resolution of the balancing test required to determine the propriety of disclosing the personal data involved.

The initial element of the balancing test directs an inquiry into the nature of the privacy right at issue. Accordingly, in

the matter at bar, it must be initially determined what personal privacy interests inhere in the property addresses of veterans who obtained loans. Obviously, an address is a record "which can be identified as applying to [an] individual". *Dept. of State, supra*, 102 S.Ct. at 1961. Moreover, as the Third Circuit noted in *Wine Hobby, supra*, "there are few things which pertain to an individual in which his privacy has traditionally been more respected than his own home." 502 F.2d at 137. The importance of the right to privacy in one's address is evidenced by the acceptance within society of unlisted telephone numbers, by which subscribers may avoid publication of an address in the public directory, and postal boxes, which permit the receipt of mail without disclosing the location of one's residence. These current manifestations of the ancient maxim that "a man's home is his castle", *see Rowan* v. *Post Office*, 397 U.S. 728, 737 (1970), support the trial court's identification of an important privacy interest in the addresses sought.

The second element of the balancing test requires consideration of the public interests asserted by HCC as justification for release of the addresses in controversy. The first of HCC's claimed public interests is purportedly to protect the rights of minority veterans to receive their benefits. Although not cited by the district court, assertions of a public interest in merely "monitoring" the operation of a federal program, without more, have not been viewed favorably by the courts. *See Miller* v. *Bell*, 661 F.2d 623, 630 (7th Cir. 1981); *Brown* v. *FBI*, 658 F.2d 71, 76 (2d Cir. 1981). Further, the district judge specifically concluded that the data already released permitted a statistical comparison between white and black veterans sufficient to "prove that minorities have not been discriminately (sic) denied those benefits."

The second public purpose asserted by HCC is to determine if VA loans have been manipulated to resegregate Cleveland Heights through racial steering. Bearing in mind that at this stage of the balancing test HCC must only identify a legitimate

public purpose which would be served by disclosure, there is little doubt that an investigation of steering is a legitimate public interest. Racial steering, and the destabilizing segregation which can result, have been recognized by the Supreme Court as serious public issues. *Gladstone Realtors* v. *Village of Bellwood*, 441 U.S. 91 (1979).

The initial appearance of propriety of HCC's public interest claim thereupon requires exposure to the final requirement of the test, namely, to balance the privacy interest of persons in their home address against the public interest in preventing racial steering in real estate. The district court here concluded that the addresses, loan amounts and lender identifications were "surplussage", and further concluded that any manipulation of the VA loan program in Cleveland Heights could be detected from a statistical table reflecting the aggregate of all loans made throughout the entire city.

In fact, it is doubtful that simply comparing the total amount loaned to blacks in the geographical boundries of Cleveland Heights with the city-wide aggregate of loans advanced to whites would disclose the existence of real estate steering within the city. The evidence adduced by HCC, and unrebutted by the government, is plain that steering is a phenomenon whereby racial groups are concentrated in, or dispersed from, very specific neighborhoods or areas. Such practices, while originating in particular geographical districts, can have the effect of resegregating the entire city, over time, by preventing the development of stable, integrated neighborhoods.

However, the mere fact that HCC cannot utilize in its study the composite statistics provided by the VA does not compel release of the information herein requested. HCC's demonstrated public interest must nevertheless be weighed against the previously described privacy interest in an individual's address. In balancing the competing interests, it is apparent that release of the requested information would subject a veteran, who is himself not suspected of any wrongdoing, to

involuntary personal involvement in HCC's investigation of steering. Even if HCC did not itself attempt to link addresses to specific veterans, any realtor or lender accused of steering by evidence compiled from individual VA loan reports could, if inclined to do so, certainly seek to examine the reports and counter the inference of steering by interrogating the individual buyers of the identified property. Holding a person's privacy hostage in this fashion is contrary, as the Chief Justice said in *Rowan, supra,* to the basic right in this nation simply to be left alone. Certainly nothing prevents HCC from publicly advertising its investigation and requesting any VA loan recipient who desires to cooperate with HCC to come forward if he so elects, or pursuing other less controversial avenues to obtain the desired information.

The Court is accordingly constrained to conclude that the ultimate conclusion of the trial court was not clearly erroneous and that the redacted information is protected by Exemption 6.

HCC here further argues that it is entitled to the addresses because 38 U.S.C. § 3301(f)(1) mandates disclosure of otherwise confidential VA information to an organization "directly connected with the conduct of [veterans] programs and the utilization of [veterans] benefits." The simple fact is that HCC has no *direct* connection with aiding veterans such as the Red Cross or the American Legion, and this section, by its ordinary meaning, is inapplicable to the instant matter.

It is also asserted that 38 U.S.C. §3301(c)(2) and 38 C.F.R. § 1.512(b)(1) require full release of VA appraisal reports or reasonable value certificates "to any person who applies". As the District Court properly noted, this section is expressly made subject by 38 U.S.C. § 3301(j) to the FOIA and the Privacy Act so that "any disclosure" thus authorized must be made pursuant to the FOIA. HCC's interpretation of the disclosure requirement is selective and inapposite.

Finally, the appellant argues that somehow the "public purpose" of integration must here override the balancing test

of the FOIA. This is simply an argument as to the manner in which the balancing test should be applied, not a *substitute* for the test. There is no authority for the proposition that furtherance of any public purpose, however salutary, may suspend completely the statutory mandate of the FOIA.

Wherefore, the decision of the district court is hereby affirmed.

EDWARDS, Circuit Judge, concurring in part and dissenting in part. I think the majority's opinion fairly states the issues in this case and I concur in their result, with the exception of the failure to meet appellant's request for information which would serve to prove or disprove whether or not the VA Home Loan Guaranty Program was being manipulated to promote housing segregation. Specifically I agree with my colleagues that the names of individual veterans and their addresses would tend to invade personal privacy of veterans taking advantage of the program.

What I do not understand is the reluctance of the agency to release information pertaining to lenders and amounts of mortgage loans and to furnish numbers and amounts of such loans in at least a reasonable number of particular blocks which appellants might designate. The Supreme Court has pointed out "that Congress considered [fair housing] to be of the highest priority" in *Trafficante* v. *Metropolitan Life Insurance Co.*, 409 U.S. 205, 211 (1972).

I would remand this case with instructions to the Veterans Administration to cooperate with plaintiff in devising the reasonable spot check procedure just referred to.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

HEIGHTS COMMUNITY CONGRESS, Plaintiff,	CASE NO. CRO-52
-vs-	Judge John M. Manos
VETERANS ADMINISTRATION, Defendant.	O R D E R

IT IS HEREBY ORDERED that pursuant to the Memorandum of Opinion in the above-captioned case, Heights Community Congress' motion for summary judgment is denied and the Veterans Administration's motion for summary judgment is granted on the issue of disclosure, but denied on the issue of payment of production costs.

UNITED STATES
DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

HEIGHTS COMMUNITY CONGRESS, Plaintiff, -vs- VERTERANS ADMINISTRATION, Defendant.	CASE NO. CRO-52 Judge John M. Manos MEMORANDUM OF OPINION

On October 25, 1979 plaintiff, Heights Community Congress, (hereinafter, HCC), requested that pursuant to the Freedom of Information Act, (hereinafter, FOIA), 5 U.S.C. § 552,[1] the defendant, Veterans Administration, (hereinafter, VA), disclose the total number of VA insured loans granted in Cleveland Heights, Ohio by census tract and/or zip code, as well as by race, for the years 1976, 1977 and 1978. HCC further requested that production fees for securing the information be waived as permitted by FOIA subsection (a)(4)(A).[2] The VA failed to disclose the requested information within the

time period specified in FOIA subsection (a)(6)(A)(i).[3]

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1 5 U.S.C. Section 552, in pertinent part, provides:

> (a) Each agency shall make available to the public information as follows:
>
> (3) Except with respect to the records made available under paragraphs (1) and (2) of this subsection, each agency, upon any request for records which (A) reasonably describes such records and (B) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person.

2 5 U.S.C. Section 552(a)(4)(A) provides:

> In order to carry out the provisions of this section, each agency shall promulgate regulations, pursuant to notice and receipt of public comment, specifying a uniform schedule of fees applicable to all constituent units of such agency. Such fees shall be limited to reasonable standard charges for document search and duplication and provide for recovery of only the direct costs of such search and duplication. Documents shall be furnished without charge or at a reduced charge where the agency determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public.

3 5 U.S.C. Section 552(a)(6)(A)(i) provides:

> Each agency, upon any request for records made under paragraph (1), (2), or (3) of this subsection, shall determine within ten days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefor, and of the right of such person to appeal to the head of the agency any adverse determination.

Consequently, on January 11, 1980 HCC filed the above-captioned case to compel the VA to disclose the information as required by FOIA. On March 18, 1980 this court held a status conference during which it ordered the VA to furnish the required information. On March 28, 1980 the VA disclosed to HCC the total number of VA insured loans granted in Cleveland Heights by race and by zip code for the years 1975-1979.

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4 The following chart disclosed by the VA, summarized the disclosure:

ZIP CODES	FY 1975		FY 1976		FY 1977		FY 1978		FY 1979		
	B	W	B	W	B	W	B	W	B	W	TOTALS
44106	2	2	0	1	0	0	0	1	0	1	7
44112	45	4	29	2	13	2	8	2	8	1	114
44118	134	33	68	23	32	23	28	9	26	13	389
44121	33	34	37	25	21	8	9	4	11	11	193
TOTALS	214	73	134	51	66	33	45	16	45	26	703

Because the VA maintained the desired information by zip code, it was unable to provide the data by census tract. The VA further informed HCC that the production costs for the information were $2,956.90. The VA indicated that this figure was negotiable. In early May, 1980 HCC moved this court to waive the production costs and award it attorney's fees.

On May 21, 1980 HCC submitted a second FOIA request to the VA asking the VA to release the Residential Appraisal Form 26-1803 and Certificate of Reasonable Value Form 26-1805 for each loan granted in Cleveland Heights for the years 1975-1979. Again HCC requested a waiver of fees. HCC contends that because it needs the information to protect the rights of veterans to equal housing opporutnity and to prevent the racial resegregation of Cleveland Heights by wrongful manipulation of the VA home loan

guaranty, disclosure would primarily benefit the public. On June 9, 1980 the VA released all the requested forms but deleted the veterans' names, any social security numbers, the veterans' current addresses, the property addresses, the amount of the loans and lenders' numbers. The HCC exhausted its administrative appeals but was not successful in securing the deleted information.

On September 5, 1980 the VA moved for summary judgment because the VA had fully complied with HCC's FOIA request and to compel HCC to pay production costs. On October 14, 1980 HCC amended its complaint and asked the court to compel the VA to disclose the information deleted from the Residential Appraisal Report and Certificate of Reasonable Value Forms. On May 4, 1981 HCC filed a motion for summary judgment arguing that it was entitled to the information as a matter of law.[5]

5 In its motion for summary judgment, HCC stated that it was no longer seeking the names of the veterans or their social security numbers.

The HCC also renewed its motions for attorney's fees and waiver of production costs. On May 15, 1981 the VA filed a brief in opposition to the motion for summary judgment. HCC and the VA filed supplemental briefs respectively on September 29, 1981 and October 9, 1981.

For the reasons discussed below, HCC's motion for summary judugment is denied and the VA's motion for summary judgment is granted.

HCC contends that it has a right to the deleted information under FOIA and under 38 U.S.C. § 3301.

However, the VA argues that FOIA does not entitle HCC to the deleted information because disclosure would constitute a clearly unwarranted invasion of personal privacy in violation of FOIA subsection (b), the exemption provision. FOIA subsection (b) provides in pertinent part:

> This section does not apply to matters that are -
>
> (6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;...
>
> Any reasonable segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection.

In determining whether disclosure would constitute an unwarranted invasion of privacy, the courts first decide if public access to the information is tantamount to an invasion of privacy; if so, the courts then decide if such an invasion is justified by any countervailing public benefit from disclosure. In applying this balancing test the court should also weigh whether the public benefit can be achieved without the material. Madiera Nursing Center, Inc. v. National Labor Relations Board, Region No. 9, 615 F.2d 728 (6th Cir. 1980);

Rural Housing Alliance v. United States Department of Agriculture, 498 F.2d 73 (D.C. Cir. 1974); and Wine Hobby USA, Inc. v. United States Internal Rev. Serv., 502 F.2d 133 (3rd Cir. 1974).

Exemption (b)(6) protects disclosure of the information the VA deleted. In Wine Hobby, the court ruled:

> ...the list of names and addresses is a file within the meaning of Exemption (6). A broad interpretation of the statutory term to include names and addresses is necessary to avoid denial of a statutory protection in a case where release of requested material would result in a clearly unwarranted invasion of personal privacy.

502 F.2d at 135. In applying the balancing test, the court further held: "Turning to the first consideration, we conclude disclosure would involve an invasion of privacy." Id. at 136. In Rural Alliance, the court ruled that names, geographical references, other identifying information and

other information of a clearly personal and confidential nature are protected by exemption (b)(6). Accordingly, the court holds that disclosure of the deleted information would be an invasion of privacy.

The public interest purposes, which the HCC asserts would be promoted by disclosure, do not justify the invasion of privacy. The HCC claims the first public interest purpose is to protect the rights of minority veterans to equal housing. The statistical data released accurately depicts the VA benefits many minority veterans received and proves minorities have not been discriminately [sic] denied those benefits. Thus, disclosure of the deleted information would only reveal personal information about individuals whose rights to equal housing have been fully protected. Therefore, this court holds that disclosure of the deleted information would not contribute to the first public interest

purpose asserted by the HCC and would constitute a clearly unwarranted invasion of privacy.

The other public interest purpose asserted by HCC is to determine if the VA home loan guaranty program has been wrongfully manipulated so as to attempt to resegregate Cleveland Heights. The requested forms with the deleted information present the criteria the VA used to determine the standards by which the benefits were to be granted. Thus, one could determine whether the home loan guaranty program has been manipulated notwithstanding the present state of the forms. Veterans' names, addresses, and other identifying information is surplusage. When statistical data will serve the purpose of the inquirer, the release of unnecessary information that would invade an individual's right to privacy is clearly unwarranted.

Title 38 U.S.C. § 3301(f)(1) in pertinent part provides:

> The Administrator may, pursuant to regulations the Administrator shall prescribe, release the name or address, or both, of any present or former member of the Armed Forces, or a dependent of a present or former member of the Armed Forces, (1) to any nonprofit organization if the release is directly connected with the conduct of programs and the utilization of benefits under this title,...

HCC argues that because it is a nonprofit organization and because release of the deleted information "is directly connected with the conduct of programs and utlization of benefits under Title 38 § 3301(f)(1) requires disclosure. In essence, the benefit alleged is the right to equal housing opportunity. Regardless of the importance of this right, it is not a benefit to veterans directly connected with Title 38. Consequently, 38 U.S.C. § 3301(f)(1) does not entitle HCC to the information.

Finally, HCC argues that the deleted information should be released pursuant to 38 U.S.C. § 3301(c)(2) which provides:

> Any appraisal report or certificate of reasonable value submitted to or prepared by the Veterans' Administration in connection with any loan guaranteed, insured, or made under chapter 37 of this title shall be made available to any person who applies for such report or certificate.

However, the VA acted correctly in deleting the information and then releasing the forms. Title 38 U.S.C. § 3301(j) provides:

> Except as provided in subsection (i)(1) of this section, any disclosure made pursuant to this section shall be made in accordance with the provisions of section 552a of title 5. [The Privacy Act]

Thus, section 3301 expressly incorporates subsection (b)(2) of the Privacy Act which provides that absent written consent of the third party, information may not be released if it would be disallowed under FOIA. Because the deleted information may not be

released under the privacy exemption, FOIA exemption (b)(2), the court holds that HCC's position is without merit.

Accordingly, HCC's motion for summary judgment on the issue of disclosure of the deleted information is denied, and the VA's motion for summary judgment on the issue of disclosure is granted; it has fully complied with all of HCC's FOIA requests.

HCC's motion for summary judgment for attorney's fees and waiver of production fees and the VA's motion for summary judgment to compel payment of production fees raise genuine issues of material fact and are therefore denied. Smith v. Hudson, 600 F.2d 60 (6th Cir. 1979), cert. denied, 444 U.S. 495 (1979).

IT IS SO ORDERED.

/s/ John M. Manos
UNITED STATES
DISTRICT JUDGE